IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.361 OF 2002

Shri. C.N.Bhaskaran ..Petitioner.

Vs.

M/s.Gannon Dunkerley & Co. Ltd.

& Ors. ..Respondents.

....

Mr.V.A.Pai for the Petitioner.

Petitioner present in person.

Mr.R.V.Paranjape for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

6th April, 2005.

P.C. :

1. The Petitioner attained the age of superannuation of 60 years on 26th July, 1996 and was accordingly retired from the service of the First Respondent. The Petitioner was in occupation of service accommodation being Flat No.32 at 168/169, Vidyanagri Marg, Kalina, Mumbai. The First Respondent initiated proceedings under Section 630 of the Companies Act, 1956 against the Petitioner in December 1997. Thereafter on 29th

June, 1998 the Petitioner filed a complaint of unfair labour practices under items 5, 9 and 10 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The substantive relief in the complaint was a direction that was sought against the First Respondent to sell and transfer the flat which was in the occupation of the Petitioner to him. The complaint has been dismissed by the impugned order dated 28th February, 2001.

2. The management had made an offer to the Petitioner amongst other employees on 21st May, 1974 by which it was proposed to dissolve the subsidised housing scheme for the members of the staff of the employer and an offer was made to the Petitioner to purchase the flat at and for a total consideration of Rs.43,935/-. On 4th June, 1974, the Petitioner rejected the offer on the ground that the rate which had been offered by the First Respondent was exorbitant. Almost 20 years thereafter on 24th May, 1994 the Petitioner made a request to the management for the purchase of the flat on conditions similar to those on which some of the flats were sold to other employees of the

company. The management did not respond to the offer and upon the superannuation of the Petitioner, instituted proceedings under Section 630 of the Companies Act, 1956. In the course of his cross examination, the Petitioner made the following admissions :

> "It is correct that whenever flat has been purchased by the employees of the company it was under written agreement. It is correct that no such agreement has been entered into between myself and the respondent company. Now I say that no written agreement was executed."

He then further admitted thus:

> "It is correct that I had declined the offer given by the company about purchasing the flat occupied by me in 1974. Thereafter no offer in writing was made to me by the respondent company about sale of flat."

3. The Petitioner admitted that several other

employees who had been residing in the staff quarters have retired from service and had ceased to reside therein.

4. On this state of the record, the Industrial Court was, in my view, correct in arriving at the conclusion that there was no merit in the complaint. There was an offer by the management and which was not accepted by the Petitioner at the relevant time. In these circumstances, it could not be said that any discrimination or partiality was practised by the management or that there was a breach of any settlement, award or agreement. The case of the Petitioner was that there were certain discussions between him and an officer by the name of Mr.Kaushik who subsequently suffered a paralytic stroke. The Industrial Court has on a review of the evidence found it improbable that there would have been any such oral understanding with an officer of the company which would not have been reduced to writing. The complaint was instituted only upon the receipt of summons in proceedings under Section 630 of the Companies Act, 1956. Even according to the Petitioner, there was no term in the appointment letter or the service conditions

for the sale of such a flat. Other employees who were in occupation of service accommodation had also vacated their quarters after retirement. Proceedings have been adopted against employees like the Petitioner who have not vacated their service quarters. On this state of the record the finding arrived at by the Industrial Court is correct and warrants no interference in the exercise of the supervisory jurisdiction under Article 227.

5. While dismissing the complaint, the Industrial Court directed the First Respondent to pay to the Petitioner his legal dues which, the Court is assured, shall be done expeditiously. After the judgment was dictated in open Court, Counsel for the Petitioner informs the Court that the Petitioner who is present in the Court does not seek to contest the matter any further and only seeks reasonable time to vacate. This prayer is not opposed. Counsel appearing on behalf of the First Respondent assured the Court that the payment of legal dues shall be made simultaneously with the Petitioner handing over vacant possession of the service quarters. The Petitioner is present before

the Court and undertakes to hand over vacant and peaceful possession on or before 31st July, 2005. Undertaking accepted.

The Petition is disposed of in the aforesaid terms.